

contract and the other relationships between the parties. Ultimately the determination of the precise scope of such arrangements which result in creating larger enterprises rests with the courts.

§ 779.231 Franchise arrangements which do not create a larger enterprise.

(a) While it is clear that in every franchise a businessman surrenders some rights, it equally is clear that every franchise does not create a larger enterprise. In the ordinary case a franchise may involve no more than an agreement to sell the particular product of the one granting the franchise. It may also prohibit the sale of a competing product. Such arrangements, standing alone, do not deprive the individual businessman of his "control" so as to bring him into a larger enterprise with the one granting the franchise.

(b) The portion of the Senate Report quoted in the § 779.229 cites a "bona fide independent automobile dealer" as an example of such a franchise arrangement. (It is recognized that salesmen, mechanics, and partsmen primarily engaged in selling or servicing automobiles, trucks, trailers, farm implements, or aircraft, employed by non-manufacturing establishments primarily engaged in the business of selling such vehicles to ultimate purchasers are specifically exempt from the overtime pay provisions under section 13(b)(10) of the Act. Section 779.372 discusses the exemption provided by section 13(b)(10) and its application whether or not the establishment meets the Act's definition of a retail or service establishment. The automobile dealer is used here only as an example of the type of franchise arrangement which, within the intent of the Congress, does not result in creating a larger enterprise.) The methods of operation of the independent automobile dealer are widely known. While he operates under a franchise to sell a particular make of automobile and also may be required to stock certain parts and to maintain specified service facilities, it is clear that he retains the control of the management of his business in those respects which characterize an independent businessman. He deter-

mines the prices for which he sells his merchandise. Even if prices are suggested by the manufacturer, it is well known that the dealer exercises wide discretion in this respect, free of control by the manufacturer or distributor. Also the automobile dealer retains control with respect to the management of his business, the determination of his employment practices, the operation of his various departments, and his business policies. The type of business in which he is engaged leaves him wide latitude for the exercise of his judgment and for decisions with respect to important aspects of his business upon which its success or failure depends. On the basis of these considerations, it is evident why the independent automobile dealer was cited as an example of the type of franchise which does not create a larger enterprise encompassing the dealer, the manufacturer or the distributor. Similar facts will lead to the same conclusion in other such arrangements.

§ 779.232 Franchise or other arrangements which create a larger enterprise.

(a) In other instances, franchise arrangements do result in bringing a dealer's business into a larger enterprise with the one granting the franchise. Where the franchise arrangement results in vesting control over the operations of the dealer's business in the one granting the franchise, the result is to place the dealer in a larger enterprise with the one granting the franchise. Where there are multiple units to which such franchises have been granted, the several dealers are considered to be subject to the common control of the one granting the franchise and all would be included in the same larger enterprise.

(b) It is not possible to lay down specific rules to determine whether a franchise or other agreement is such that a single enterprise results because all the facts and circumstances must be examined in the light of the definition of the term "enterprise" as discussed above in this subpart. However, the following example illustrates a franchising company and independently owned retail establishments which would constitute a single enterprise: